

Iowa Department of Natural Resources  
Environmental Protection Commission

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ITEM

12

DECISION

TOPIC

**28E Agreement Between the Iowa Underground Storage Tank Board and the Iowa Department of Natural Resources for Funding the Department's Underground Storage Tank Section for Fiscal Year 2009**

**ATTACHMENTS Iowa UST Fund Board and DNR FY'09 Funding 28E Agreement.**

The Department is requesting approval for entering into a 28E agreement with the UST Fund Board that will provide a portion of the funding needed for the management and operation of the Department's UST Section. Receipt of the funding is contingent upon DNR meeting quarterly milestones in four areas of responsibility.

The source of funding for this agreement is the state's tank tag fees. An owner or operator of an underground tank shall pay an annual storage tank management fee of sixty-five dollars for each tank over one thousand one hundred gallons capacity. DNR collects the fees and issues the tags. Twenty-three percent of the fees collected are deposited in DNR's storage tank management account of the groundwater protection fund. Seventy-seven percent of the fees are transferred and deposited in the comprehensive petroleum underground storage tank fund which is managed by the UST Fund Board. A total of \$500,000 to \$525,000 is collected on an annual basis. In FY'08 \$385,000 was transferred to the UST Fund Board while DNR retained \$115,000.

Funding for DNR's tank programs particularly the Underground Storage Tank Program (UST) remains problematic. In order to have a balanced budget DNR has relied upon the portion of the tank tag fees that are transferred to the UST Fund Board. The mechanism for the reverse transfer has been a 28E Agreement. For the current fiscal year DNR has agreed to carry out and complete four areas of responsibility. The UST Fund Board agrees to compensate the Department in an amount of \$385,000. A summary of DNR's responsibilities is as follows:

1. Perform an assessment of low risk Leaking Underground Storage Tank (LUST) sites for which monitoring has been conducted for five or more years. The outcome is to develop criteria and a procedure for determining which sites are eligible for closure.
2. Perform research and conduct advisory group meetings for determining the impacts of petroleum on plastic water supply lines' integrity.
3. Conduct meetings and develop a plan for evaluating other Risk Based Corrective Action (RBCA) rules including but not limited to: soil gas methodology and guidance; sewers as receptors for contaminants from LUST sites; surface water restrictions; and, capturing the effect of time on historical releases.

4. UST Section staff will meet on a quarterly basis with the appropriate DNR Field Office Staff to review accomplishments of previous quarter, set priorities for the next quarter, and collaborate on enforcement strategies.

The approval by the UST Fund Board to enter into this agreement is contingent upon EPC's approval of the two other 28E Agreements that are on today's agenda. Since we are already 4 months into the '09 Fiscal Year it is imperative that these matters be resolved.

Wayne Gieselman  
Administrator  
Environmental Protection Division

November, 10 2008

**28E AGREEMENT**  
**BETWEEN the IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE**  
**TANK FUND BOARD, and the IOWA DEPARTMENT OF NATURAL RESOURCES for**  
**FUNDING AND MANAGEMENT of the UNDERGROUND STORAGE TANK SECTION**  
**of the IOWA DEPARTMENT OF NATURAL RESOURCES FOR FISCAL YEAR 2009**

This Agreement is entered into by and between the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (hereinafter "Board"), with its Administrator's office located at 2700 Westown Parkway, Suite 320, W. Des Moines, Iowa 50266, and the Iowa Department of Natural Resources (hereinafter "DNR"), located at 502 E. 9th Street, Des Moines, IA 50319. This Agreement is entered into pursuant to Chapter 28E of the Code of Iowa, and is effective as of the date it is fully executed by all parties.

**I. PURPOSE**

The purpose of this Agreement is to establish the terms under which the Board will provide funding pursuant Iowa Code section 455G.6(15)"a." The Board agrees to provide the DNR with funds in an amount equivalent to the UST tank management fees collected and allocated to the Board pursuant to Iowa Code sections 455B.479 and 455G.8"3." The Parties do not intend to create a separate legal entity under this Agreement, and no real or personal property will be used or acquired under the terms of this Agreement.

**II. TERM**

The term of this Agreement shall begin upon execution hereof by all parties hereto and shall run through June 30, 2009, unless otherwise terminated or extended pursuant to the terms of this Agreement.

**III. DNR RESPONSIBILITIES**

**Milestone 1:** By January 2, 2009, the DNR shall:

- a. Examine a subset low risk sites for which monitoring has been conducted for more than five years. Identify a set of conditions and / or criteria for which low risk sites may be eligible for closure on a case-by-case basis; and,
- b. Conduct meetings with DNR, Fund, and DPH staff to review literature on the affects of petroleum on plastic water line integrity. Prepare a report of findings, and recommendations for policy or rule change considerations, and /or broadening a focus group make policy; and,
- c. Form technical advisory group(s) to evaluate other RBCA rules including, but not limited to, (1) soil gas methodology and guidance, (2) sewers as receptors, (3) surface water restrictions, and (4) capturing effect of time on historical releases; and;
- d. conduct a meeting between representatives of the DNR central office and the DNR field offices to review UST/LUST priorities and accomplishments since October 1, 2008, and to set UST/LUST

priorities for the time period from January 2, 2009, to April 1, 2009. Prepare written report detailing activities performed during the previous quarter, reconciling those activities to the established priorities and establishing the priority list for the next quarter.

**Milestone 2:** By April 1, 2009, the DNR shall:

- a. Upon examination of low risk sites in long-term monitoring, develop broad criteria for when low risk sites generally may be closed. Develop draft policy and / or rule changes; and
- b. Convene a PWL advisory group to focus on RBCA policy changes. Develop policy changes, guidelines and or draft rule changes for the plastic water line pathway; and,
- c. Conduct meeting(s) with technical advisory group(s) formed in Milestone 1 for evaluation of other RBCA rules including, but not limited to, (1) soil gas methodology and guidance, (2) sewers as receptors, (3) surface water restrictions, and (4) capturing effect of time on historical releases; and,
- d. Conduct a meeting between representatives of the DNR central office and the DNR field offices to review UST/LUST priorities and accomplishments since January 2, 2009, and to set UST/LUST priorities for the time period from April 1, 2009, to June 30, 2009. Prepare written report detailing activities performed during the previous quarter, reconciling those activities to the established priorities and establishing the priority list for the next quarter.

**Milestone 3:** By June 30, 2009, the DNR shall:

- a. Implement final “low risk” site closure policy or rule jointly agreed upon by DNR and Board;
- b. Using the information gained during completion of Milestones 1 and 2, complete review of available actual experiential data and scientific studies and draft jointly agreed revisions to RBCA rules for plastic water lines; and
- c. Using the information gained during completion of Milestone 2, and in cooperation with the Board, prepare a written plan for the evaluation of other RBCA rules including, but not limited to, (1) soil gas methodology and guidance, (2) sewers as receptors, (3) surface water restrictions, and (4) capturing effect of time on historical releases; and
- d. conduct a meeting between representatives of the DNR central office and the DNR field offices to review UST/LUST priorities

and accomplishments since April 1, 2009, and to set UST/LUST priorities for the time period from July 1, 2009, to October 1, 2009. Prepare written report detailing activities performed during the previous quarter, reconciling those activities to the established priorities and establishing the priority list for the next quarter.

#### **IV. BOARD RESPONSIBILITIES**

The Board shall provide the DNR with funds, subject to contingencies stated in this section, in an amount equivalent to the UST tank management fees collected and allocated to the Board during the term of this Agreement. The Board has estimated such tank management fees to be approximately Three Hundred Eighty-Five Thousand Dollars (\$385,000), and it shall pay this amount in quarterly installments of Ninety-Six Thousand Five Hundred Dollars (\$96,500), commencing on October 2, 2008, and thereafter on January 2, 2009, April 2, 2009, and June 29, 2009. If by June 29, 2009, the Board determines the actual amount the UST tank management fees allocated to the Board during the term of this Agreement varies from the estimated amount of \$385,000 by 10% or more, the Board shall adjust the June 29, 2009 installment accordingly to reflect the actual amount allocated to the Board. If, however, the variance between the estimated amount of UST tank management fees allocated to the Board during the term of this Agreement and the actual amount is less than 10%, the final installment shall remain unchanged.

Failure by the DNR to meet a single Milestone will not be considered a breach of this Agreement by either party; however, any obligation by the Board to make payments pursuant to this Agreement shall be suspended for any period of time for which the DNR fails to timely meet any part of a Milestone to the satisfaction of the Board. Upon successful completion of all outstanding Milestone requirements for which payment was suspended, the Board may pay the DNR the payment(s) suspended, and resume payments pursuant to the schedule in this Section IV of the Agreement

#### **V. FINANCING**

The Board shall pay all costs associated with the administration of this Agreement in accordance with the terms of Section IV of this Agreement. The DNR shall use the funds provided by the Board exclusively for the operation of the DNR's UST Section. Use of the funds for any other DNR sections or programs is not authorized by this Agreement. DNR shall not seek additional funding from any of the funds maintained by the Board, other than through this agreement or the amendment of this agreement. Nothing in this agreement shall limit DNR ability to seek legislative changes to the tank tag deposits for fiscal year 2010.

#### **VI. AMENDMENT**

This Agreement may be amended from time to time by written agreement of the Parties. All amendments shall be in writing, signed by both Parties, and filed with the Secretary of State.

#### **VII. TERMINATION**

**A. Termination Upon Mutual Consent.** This Agreement may be terminated upon the mutual written consent of the parties.

**B. Termination By One Party.** Notwithstanding anything in this Agreement to the contrary, and subject to the limitations, conditions, and procedures set forth below, either party to this Agreement shall have the right to terminate this Agreement without penalty by giving sixty (60) days' written notice to the other party to the Agreement as a result of any of the following:

1. There are insufficient funds or staffing resources available to allow a party to fulfill its obligations under this Agreement; or
2. A change in the law prevents or substantially impairs a party's ability to participate in this Agreement.
3. The DNR fails to meet two consecutive Milestone requirements set forth in Section III of this Agreement.

## **VIII. NOTICES**

Whenever notices and correspondence are to be given under this Agreement, the notices shall be given by personal delivery to the other party, or sent by mail, postage prepaid, to the other party as follows:

### To the Board

Iowa UST Fund Board  
2700 Westown Parkway, Suite 320,  
W. Des Moines, Iowa 50266

### To the DNR

Iowa Department of Natural Resources  
Iowa Department of Natural Resources  
UST Section  
502 E. 9th Street  
Des Moines, IA 50319

## **IX. APPLICABLE LAW**

This Agreement is to be governed by the laws of the State of Iowa.

## **X. FILING AND RECORDING**

It is agreed the Board will electronically file this Agreement with the Secretary of State, and electronically file any amendment, renewal, or notice of termination of this Agreement within thirty days as provided in Iowa Code section 28E.8.

**IN WITNESS WHEREOF**, and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt, adequacy, and legal sufficiency of which are hereby acknowledged, the parties have entered into this 28E Agreement and have caused their duly authorized representatives to execute this 28E Agreement.

**IOWA COMPREHENSIVE PETROLEUM  
UNDERGROUND STORAGE TANK  
FUND BOARD**

BY: \_\_\_\_\_  
Susan Voss, Chair

DATE: \_\_\_\_\_

**IOWA DEPARTMENT OF NATURAL  
RESOURCES**

BY: \_\_\_\_\_  
Richard Leopold, Director

DATE: \_\_\_\_\_